

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

GREGORY L. WALLACE,

Plaintiff,

vs.

DAVID DUKE, et al.,

Defendants.

CV 15-00043-BLG-SPW-CSO

ORDER AND FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE TO
DISMISS

Plaintiff Gregory Wallace has filed a proposed Complaint (*ECF 1*), a Motion for Leave to Proceed in Forma Pauperis (*ECF 3*), and a document which has been construed as a Motion to Appoint Counsel (*ECF 5*). Wallace is incarcerated at Montana State Prison and is proceeding without counsel.

On July 9, 2015, the Court issued an Order advising Wallace of Local Rule 3.1(d)(4) which prohibits prisoners from maintaining more than two concurrent non-habeas actions in forma pauperis. *ECF 4*. Because this is Wallace's fourth civil action currently pending in this Court (*See* Civil Action Nos. 15-CV-30-GF-BMM-JTJ, 15-CV-42-H-DLC-JTJ, and 15-CV-55-M-DLC-JCL), he was given an opportunity to show

cause why his motion to proceed in forma pauperis should not be denied and which of the four options set forth in Local Rule 3.1(d)(4) he would pursue. *ECF 4*.

Wallace did not respond to the Court's Order but on July 10, 2015 he filed what has been construed as a motion to appoint counsel. *ECF 5*. Wallace has made no showing that he is in imminent danger of serious physical injury, that he intends to pay the filing fee, or that he intends to dismiss or to withdraw one of his actions.

Given his failure to respond to the Court's prior Order, the motion to proceed in forma pauperis should be denied pursuant to Local Rule 3.1(d)(4). In the Court's July 9, 2015 Order (*ECF 4*), Wallace was given an opportunity to pay the filing fee and he has not done so. Therefore, the Court recommends that this matter be dismissed.

In light of this recommendation, the motion for appointment of counsel will be denied.

Based upon the foregoing, the Court issues the following:

ORDER

Wallace's Motion to Appoint Counsel (*ECF 5*) is DENIED.

Further the Court issues the following:

RECOMMENDATION

Wallace's Motion to Proceed in Forma Pauperis (*ECF 3*) should be DENIED and this matter DISMISSED WITHOUT PREJUDICE.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

Wallace may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 6th day of August, 2015.

/s/ Carolyn S. Ostby
United States Magistrate Judge

¹As this deadline allows a party to act after the Findings and Recommendations is "served," it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.